IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5062 OF 2005

Maruti Shripati Kalkutki. ...Petitioner.
Vs.
Maharashtra Industrial Development
Corporation & Ors. ...Respondents.
....
Mr. N. V. Bandiwadekar i/b. Khandeparkar & Associates for the Petitioner.
Mr. P. P. Chavan i/b. M/s. Little & Co. for Respondent Nos.1 to 3.
Mr. Bhavesh Parmar for Respondent No.4.
.....

CORAM : F.I.REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

October 14, 2005.

P.C.

Rule. Heard forthwith.

2. The Petitioner by the present petition seeks two reliefs. It is firstly contended that though he was eligible to be considered for the post of Deputy Engineer in the year 1998, he was not so considered. The Respondents have filed their reply and have also produced the record of the Departmental Promotion committee (DPC). That indicates that DPC did consider him in the year 1998. It is, however, contended on behalf of the Petitioner that the Respondents applied the wrong bench mark. The post, it is

contended, was not a Class I post and the Respondents applied the bench mark of the Class I post. In these circumstances, it is contended that by applying wrong yardstick, the Petitioner was denied promotion when he was so eligible.

3. We find that there is some merit in the matter. We leave it to the Respondents to direct the Review DPC to be held to consider the Petitioner's eligibility for selection in the year 1998 based on the yardstick/bench mark to be applied for Class II category for selection. The Review Committee if the Petitioner is not selected to consider the case of the Petitioner for the subsequent DPC of 2003 by applying the Bench mark of Class I Officer and accordingly review the case of the Petitioner in terms of C.Rs. and considering that the post in the year 2001 has been upgraded as a Class I post. The Review D. P. C. to meet and consider the cases of the Petitioner within 16weeks from today.

4. It is next submitted that in the year 1996, the Respondents communicated six adverse entries in the C.Rs. of the Petitioner. The Petitioner made representation subsequent to which, five adverse entries were expunged and one pertaining to

integrity was retained. This was communicated to the Petitioner in the year 1997. It is the case of the Petitioner that subsequently, the criminal case which was filed, the Petitioner has been acquitted and based upon that he has made representation. Though his case has been favourably recommended by the Reviewing and Reporting Officers, no action has been taken and in these circumstances, it is submitted that the adverse entry on integrity should be struck off.

5. The Petitioner, after rejection of his representation against the adverse entry of integrity in the year 1997, made a representation in the year 2004 which was rejected, against which the Petitioner has preferred the present petition.

6. We have perused the impugned judgment. We do not find that the judgment is a clean acquittal. Even otherwise it is the Reviewing and the Reporting officers who have to make the entries. Merely because the Petitioner was acquitted by itself would not mean that the entry as to integrity has to be set aside. The test for writing C.Rs. and proving a case in the Criminal Court are entirely distinct and different. In the first case it is the credible

information which the Reporting Officer comes across in a case for demanding bribe would be sufficient whether in a criminal case to prove the guilt. It is proof beyond reasonable doubt. Mere acquittal unless it is a clear acquittal is not sufficient to expunge the remarks. The Learned Counsel then states that if the Petitioner makes a representation, the Respondents shall consider the same. It is open for the Petitioner to make a representation if entitled to in law.

7. Rule made partly absolute accordingly. No order as to costs. If the representation is made, the same to be considered and disposed of within a period of twelve weeks from today.

(F. I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)